BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BRADLEY E. CAMPBELL	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,030,318
UNIFIRST CORPORATION	)	
Respondent	)	
AND	)	
	)	
AMERICAN INTERNATIONAL SOUTH INSURANCE	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the September 28, 2006, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant alleges he injured his left knee working for respondent in a series of repetitive traumas through July 7, 2006. In the September 28, 2006, Order, Judge Barnes awarded claimant medical benefits and, in the event he is taken off work, temporary total disability benefits.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant failed to prove his alleged injury arose out of and in the course of his employment with respondent. They further argue any medical treatment that claimant may now require is not related to any injury he sustained at work but, instead, it is related to a subsequent injury claimant sustained while he was off work mowing lawns. Accordingly, respondent and its insurance carrier request the Board to deny claimant's request for workers compensation benefits.

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant argues his left knee symptoms have waxed and waned despite his physical findings remaining constant. Moreover, he believes that mowing the lawns in question merely flared his symptoms to their initial level.

The only issues on this appeal are:

1. Did claimant sustain accidental injury arising out of and in the course of his employment with respondent?

2. If so, is claimant's present need for medical treatment related to that occupational injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the file compiled to date and considering the parties' arguments, the undersigned Board Member finds:

Claimant began working for respondent in early February 2006 as a route sales representative. In that position, claimant picked up and delivered uniforms and sold products to respondent's customers. The job required claimant to enter and exit his delivery truck many times each day while carrying items, plus load the truck every night. Claimant described his daily activities, as follows:

> Getting in and out of the truck, loading the truck at night, that required a lot of lifting, we would load our loads, they would have mats, mats ranging in poundage from 15 to 40 pounds I would say, and we'd have to unload these carts about the size of the Judge's desk, and we'd load our trucks at night and that required a lot of throwing stuff in and then we'd have to get up -- I'd have to step up on the back bumper of the truck and get in and check what I had done. In unloading the truck on route, I would usually grab what I needed, and carry that out the door going down the stairs and sometimes go out the back of the truck. And then loading the dirties back in, I would follow the procedure except I'm going back in, carrying stuff up the stairs and going up on the back of the truck.[1]

Before commencing work with respondent, claimant had worked for another company for 20 years. According to claimant, he had never experienced any problems with either leg or knee before his employment with respondent.

In May 2006, claimant began experiencing symptoms in his left knee. His knee would hurt as the day progressed but the pain would resolve after he left work. The symptoms progressively worsened. On June 12, 2006, claimant reported the symptoms to his boss.

[1] P.H. Trans. at 7-8.

Respondent sent claimant to Dr. Jon P. Kirkpatrick, who saw claimant on June 12, 2006, and restricted him from stairs, kneeling, squatting, bending, crawling, and lifting more than 10 pounds. The doctor diagnosed overuse of the left knee. As the work restrictions effectively prevented claimant from performing his regular job duties, respondent assigned someone to ride with and assist claimant.

Claimant returned to the doctor on June 19, 2006, for a follow-up visit. This time, however, claimant saw Dr. Daniel V. Lygrisse. Claimant told the doctor that his knee was about the same as before. Dr. Lygrisse diagnosed left knee strain, continued his work restrictions and medications, recommended physical therapy, and set a follow-up visit for 10 days later.

When he returned to the doctor for his June 26, 2006, follow-up visit, claimant advised his knee had become very sore after mowing his lawn over the weekend. Dr. Kirkpatrick increased claimant's medications and ordered an MRI, which showed a posterior horn medial meniscal tear, a small amount of joint fusion, small Baker's cyst, and mild medial collateral ligament strain. On June 30, 2006, after reviewing the MRI findings with claimant, Dr. Kirkpatrick changed his diagnosis to a tear of the left medial meniscus.

Dr. Kirkpatrick referred claimant to Dr. Kenneth A. Jansson, who recommended surgery. But that surgery was not authorized, which prompted this preliminary hearing matter.

Claimant last worked for respondent on July 7, 2006, when he voluntarily quit. According to claimant, Dr. Kirkpatrick believed claimant's sales representative job would wreck his knees and claimant did not feel he was being fair to respondent as the company really did not have a light duty position for him to perform.

The principal issue in this appeal is whether the surgery that Dr. Jansson has recommended is related to an injury that claimant sustained at work or whether it is needed due to an injury claimant may have sustained mowing yards. Claimant testified he mowed three yards shortly before his June 26, 2006, appointment with Dr. Kirkpatrick. According to claimant, he mowed his own yard on a Saturday and two yards belonging to neighbors the day after. Each yard required approximately 45 minutes and each yard was flat. On Monday morning, after mowing the yards over the weekend, claimant awoke with knee pain that had increased to the same level it had been when he first reported it to his boss.

This Board Member finds claimant has proven he injured his left knee working for respondent through July 7, 2006. Moreover, the evidence fails to establish that claimant re-injured his left knee mowing lawns in late June 2006 or that the flare-up of left knee pain claimant experienced shortly afterwards was something more than a natural consequence of the injury that claimant sustained at work. The evidence is overwhelming that claimant's

knee problems had not resolved following the June 12, 2006, appointment with Dr. Kirkpatrick and that claimant was experiencing ongoing problems with his left knee before he mowed the three yards in question. In addition, there is no evidence that mowing would have torn the meniscus that was later found on the MRI.

The September 28, 2006, Order should be affirmed. At this juncture of the claim, it is more probably true than not that claimant's present need for surgery is directly related to the left knee injury that he sustained at work. Likewise, it is more probably true than not that claimant's left knee injury arose out of and in the course of his employment with respondent.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[2] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, this Board Member affirms the September 28, 2006, Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of November, 2006.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge

[2] K.S.A. 44-534a.